

No. 48696-2-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II

---

**STATE OF WASHINGTON,**

Respondent,

vs.

**CAITLIN ALLRED,**

Appellant.

---

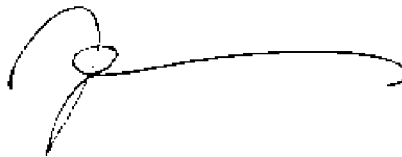
Appeal from the Superior Court of Washington for Lewis County

---

**Respondent's Brief**

---

JONATHAN L. MEYER  
Lewis County Prosecuting Attorney



By:

---

JESSICA L. BLYE, WSBA No. 43759  
Deputy Prosecuting Attorney

Lewis County Prosecutor's Office  
345 W. Main Street, 2nd Floor  
Chehalis, WA 98532-1900  
(360) 740-1240

## **TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....	ii
I. ISSUE .....	1
II. STATEMENT OF THE CASE .....	1
III. ARGUMENT .....	4
A. THE STATE PRESENTED SUFFICIENT EVIDENCE FOR A RATIONAL JURY TO FIND ALLRED GUILTY OF POSSESSION OF METHAMPHETAMINE .....	4
1. Standard Of Review .....	4
2. The State Proved Each Element Beyond A Reasonable Doubt, As Required, And Therefore Presented Sufficient Evidence To Sustain The Jury's Verdict For Possession of Methamphetamine .....	5
IV. CONCLUSION.....	13

## **TABLE OF AUTHORITIES**

### **Washington Cases**

<i>State v. Callahan</i> , 77 Wn.2d 27, 459 P.2d 400 (1969).	6, 8, 9, 11, 12
<i>State v. Camarillo</i> , 115 Wn.2d 60, 794 P.2d 850 (1990).....	6
<i>State v. Colquitt</i> , 133 Wn. App. 789, 137 P.3d 893 (2006) .....	5
<i>State v. Cote</i> , 123 Wn. App. 546, 96 P.3d 410 (2004) .....	6, 7, 10, 11, 12
<i>State v. Delmarter</i> , 94 Wn.2d 634, 618 P.2d 99 (1980) .....	5
<i>State v. George</i> , 146 Wn. App. 906, 193 P.3d 693 (2008).....	8
<i>State v. Goodman</i> , 150 Wn.2d 774, 83 P.2d 410 (2004) .....	5
<i>State v. Green</i> , 94 Wn.2d 216, 616 P.2d 628 (1980).....	5
<i>State v. Lyons</i> , 174 Wn.2d 354, 275 P.3d 314 (2012) .....	7
<i>State v. Myers</i> , 133 Wn.2d 26, 941 P.2d 1102 (1997) .....	5
<i>State v. Olinger</i> , 130 Wn. App. 22, 121 P.3d 724 (2005).....	6
<i>State v. Partin</i> , 88 Wn.2d 899, 567 P.3d 1136 (1977) .....	7
<i>State v. Reichert</i> , 158 Wn. App. 374, 242 P.3d 44 (2010) .....	6
<i>State v. Salinas</i> , 119 Wn.2d 192, 829 P.2d 1068 (1992) .....	4
<i>State v. Spruell</i> , 57 Wn. App. 383, 788 P.2d 21 (1990) .....	9, 10, 11

### **Federal Cases**

<i>In re Winship</i> , 397 U.S. 358, 90 S. Ct 1068, 25 L.Ed.2d 368 (1970) .....	5
--	---

**Washington Statutes**

RCW 69.50.4013 .....6

**Constitutional Provisions**

U.S. Constitution, Amendment XIV § 1 .....5

**Other Rules or Authorities**

WPIC 50.01 .....6

WPIC 50.02 .....6

## **I. ISSUE**

- A. Did the State present sufficient evidence to sustain Allred's conviction for Possession of Methamphetamine?

## **II. STATEMENT OF THE CASE**

On September 28, 2015, Caitlin Allred met with Cassandra Sines outside of the IGA grocery store in Winlock, Washington. RP<sup>1</sup> 26-27, 30. Cassandra Sines was working with law enforcement officers as a confidential informant and had arranged to meet with and purchase heroin from Allred. RP 24-26. Sines and Allred went into the restroom, where Sines gave Allred \$120 and Allred gave Sines a substance that was tied up in the corner of a white plastic bag. RP 28, 72-73. After Sines and Allred parted ways, Sines went to an officer waiting in the parking lot and gave him the substance Allred had delivered to her. RP 28, 73. Sines was searched before and after this interaction pursuant to standard controlled buy procedures. RP 26-30, 113-16. The officers initially believed the substance to be tar heroin based on a brief examination. RP 29-30. However, upon closer inspection, the officers believed it was fake heroin. RP 29-31. The substance was later tested and found to contain no controlled substances. RP 187-88.

---

<sup>1</sup> The State will cite to the transcript of the jury trial, which is in consecutive paginated volumes as RP.

The officers had Sines follow up with Allred about the fake heroin and arrange another meeting for the purposes of purchasing \$80 worth of heroin from Allred. RP 30-31. On October 8, 2015, Sines met with Allred at a travel trailer in Winlock, Washington. RP 30, 33, 76-77. Sines went into the trailer and exited a few minutes later visibly upset. RP 34, 135. Sines told an officer that when she first entered the trailer, she saw Allred sitting on the bed with another person. RP 76-77. Sines and Allred then went into the trailer bathroom. RP 77. Sines told the officer that Allred placed her forearm on Sines's chest, took the \$80 from Sines, and told Sines to leave and never contact her again. RP 77-79. Sines was searched, and did not have the \$80 or any substances in her possession. RP 35, 116.

The officers contacted the trailer and asked the occupants to exit. RP 136. Two men, Threadgill and McGinnis, exited first. RP 136, 172. Allred exited the trailer after that. RP 136. Understanding there was still a third male inside who was not exiting, the officers entered the trailer and removed the occupant, Jack Daniels. RP 136-37, 172. The officers received consent to search the trailer from both Daniels, the trailer's owner, and Allred, who the officers understood was in a relationship with Daniels and was also residing at the trailer. RP 139.

The officers later obtained a search warrant in order to conduct a more thorough search. RP 154-56.

During the consent search, the officers found a meth pipe on a counter across from the bed and two methamphetamine bongs in the cupboards above the counter. RP 173. In the cupboards above the bed, the officers found a digital scale. RP 174. During the warrant search, the officers found clear plastic zip bags near the counter where the meth pipe was found. RP 173. The bags, often called “scraper bags,” contained small amounts of white residue. RP 173. One of the bags was tested by the Washington State Patrol crime lab and was found to contain methamphetamine. RP 184, 188-90.

Allred was charged with Delivery of a Material in Lieu of a Controlled Substance, Robbery in the Second Degree, and Possession of Methamphetamine. CP 13-15.

At trial, Daniels testified that on October 8, 2015, Allred had been living with him in the trailer on a full-time basis. RP 208-09. He then said she would come and go. RP 209. Daniels testified that Allred kept some of her belongings at the trailer. RP 224. Daniels also testified that he pleaded guilty to a charge of Possession of Methamphetamine stemming from this incident. RP 221.

Allred was convicted of Delivery of a Material in Lieu of a Controlled Substance and Possession of Methamphetamine. CP 43, 45.<sup>2</sup> The jury found Allred not guilty of Robbery in the Second Degree. CP 44. This appeal follows. CP 60.

The State will supplement the facts as necessary throughout its argument below.

### **III. ARGUMENT**

#### **A. THE STATE PRESENTED SUFFICIENT EVIDENCE FOR A RATIONAL JURY TO FIND ALLRED GUILTY OF POSSESSION OF METHAMPHETAMINE.**

Allred argues the State did not present sufficient evidence to sustain the jury's verdict of guilty in regards to Count III: Possession of Methamphetamine. Brief of Appellant 4-5. The State presented sufficient evidence to sustain the jury's guilty verdict for Possession of Methamphetamine.

##### **1. Standard Of Review.**

Sufficiency of evidence is reviewed in the light most favorable to the State to determine if any rational jury could have found all the essential elements of the crime charged beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

---

<sup>2</sup> In Appellant's Opening Brief, the facts were misstated regarding which charges resulted in conviction and which resulted in acquittal. Respondent has notified Appellate Counsel of this error.



**2. The State Proved Each Element Beyond A Reasonable Doubt, As Required, And Therefore Presented Sufficient Evidence To Sustain The Jury's Verdict For Possession of Methamphetamine.**

The State is required under the Due Process Clause to prove all the necessary elements of the crime charged beyond a reasonable doubt. U.S. Const. amend. XIV, § 1; *In re Winship*, 397 U.S. 358, 362-65, 90 S. Ct 1068, 25 L.Ed.2d 368 (1970); *State v. Colquitt*, 133 Wn. App. 789, 796, 137 P.3d 893 (2006). An appellant challenging the sufficiency of evidence presented at a trial “admits the truth of the State’s evidence” and all reasonable inferences therefrom are drawn in favor of the State. *State v. Goodman*, 150 Wn.2d 774, 781, 83 P.2d 410 (2004). When examining the sufficiency of the evidence, circumstantial evidence is just as reliable as direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

The role of the reviewing court does not include substituting its judgment for the jury’s by reweighing the credibility or importance of the evidence. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). The determination of the credibility of a witness or evidence is solely within the scope of the jury and not subject to review. *State v. Myers*, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997), *citing State v.*

*Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). “The fact finder...is in the best position to evaluate conflicting evidence, witness credibility, and the weight to be assigned to the evidence.” *State v. Olinger*, 130 Wn. App. 22, 26, 121 P.3d 724 (2005) (citations omitted).

To convict a person of possession of a controlled substance the State must prove that the person possessed a controlled substance, and specify what the substance is. RCW 69.50.4013; See WPIC 50.01 and WPIC 50.02.

Possession of a controlled substance may be actual or constructive. *State v. Callahan*, 77 Wn.2d 27, 29, 459 P.2d 400 (1969). A person is in actual possession when a controlled substance is in the personal custody of the person. *Callahan*, 77 Wn.2d at 29. When a person does not have actual possession but has dominion or control over the controlled substance or the premises, the person is in constructive possession of the controlled substance. *State v. Cote*, 123 Wn. App. 546, 549, 96 P.3d 410 (2004) (citation omitted). “When a person has dominion and control over the premises, it creates a rebuttable presumption that the person has dominion and control over items on the premises.” *State v. Reichert*, 158 Wn. App. 374, 390, 242 P.3d 44 (2010) (citations omitted).

A person is not required to have exclusive control for the State to establish constructive possession. *Cote*, 123 Wn. App. at 549. A person who is in mere proximity of a controlled substance, without more, is not in constructive possession of the controlled substance. *Id.* A reviewing court's determination "whether there is constructive possession requires examination of the 'totality of the situation' to ascertain if substantial evidence tending to establish circumstances from which the trier of fact can reasonably infer the defendant had dominion and control over the contraband..." *Id.*, citing *State v. Partin*, 88 Wn.2d 899, 906, 567 P.3d 1136 (1977).<sup>3</sup>

Allred argues there was insufficient evidence to show she had dominion and control over the methamphetamine because she only temporarily lived at the trailer and because her boyfriend, the owner of the trailer, admitted to possessing the methamphetamine. Brief of Appellant 4. However, this argument fails as it is not based on viewing the evidence in the "light most favorable to the State" or drawing all reasonable inferences in the State's favor.

Allred cites to several cases, arguing that they are analogous to her case. Brief of Appellant 3-5. However, it is important to note

---

<sup>3</sup> *State v. Partin* was disproved on other grounds. See *State v. Lyons*, 174 Wn.2d 354, 275 P.3d 314 (2012).

the case law is clear that “[c]onstructive possession cases are fact-sensitive.” *State v. George*, 146 Wn. App. 906, 920 193 P.3d 693 (2008). The cases Allred cites to support her position, that she was not in constructive possession, are distinguishable from Allred’s case.

In *Callahan* Hutchinson was found sitting at a desk that had various pills and syringes on it. *Callahan*, 77 Wn.2d at 28. There was a cigar box filled with various drugs sitting between Hutchinson and Donlan. *Id.* There were also other drugs found in the houseboat. *Id.* Hutchinson had been a guest at the houseboat for two or three days and admitted to handling the drugs earlier in the day. *Id.* There was also two guns, two books about drugs, and a set of broken scales all of which Hutchinson admitted were his. *Id.* at 31.

The Supreme Court held the evidence was insufficient to find Hutchinson guilty of possession of a controlled substance. *Id.* The Court remarked that although Hutchinson had been staying at the houseboat for a couple of days there was no evidence that he maintained it as a residence or paid rent. *Id.* There was no evidence presented that Hutchinson had dominion or control over the houseboat. *Id.* The Court also noted that there must be consideration given to ownership of the drugs that were located near Hutchinson.

*Id.* Weaver testified at the trial that the located drugs belonged to him. *Id.* Weaver explained he had brought them onto the houseboat, he had not given or sold the drugs to anybody else, and he had sole control over the drugs. *Id.*

In *Spruell* Hill was found standing in the kitchen. *State v. Spruell*, 57 Wn. App. 383, 384, 788 P.2d 21 (1990). On the kitchen table, officers found a small scale, baking soda, alcohol, several vials, white powder residue, and a razor blade. *Id.* Near the back door, officers found white powder residue alongside the door and doorjamb, chunks of white powder on the floor, and a plate located about a foot and a half from the door. *Id.* The white powder from the kitchen table was tested and found to contain cocaine. *Id.* The plate, which had Hill's fingerprint on it, had insufficient powder residue for testing. *Id.* The State made no argument that Hill was an occupant of the premises or had dominion and control over the premises or any portion thereof. *Id.* at 387. The State's argument that Hill had dominion and control over the drugs themselves relied on the testimony of his presence in the kitchen when the officers entered and having a fingerprint on a dish which appeared to have contained cocaine immediately prior to the forced entry. *Id.* at 388. The court in *Spruell* noted that was not any evidence "relating to why Hill was in

the house, how long he had been there, or whether he had ever been there on days previous to his arrest.” The court found that none of the evidence was inconsistent with Hill being a mere visitor in the house with no other connection and that there was no basis to find Hill had dominion and control over the drugs. *Id.* at 138-39.

Timothy Cote was charged with manufacturing methamphetamine or in the alternative possession of pseudoephedrine or ephedrine with the intent to manufacture methamphetamine and taking a motor vehicle without permission. *Cote*, 123 Wn. App. at 548. The charges stemmed from officers serving an arrest warrant on a resident of a home and while at the residence an officer noticed an unfamiliar truck parked in the driveway. *Id.* at 547-48. The officer ran the truck and it came back as reported stolen. *Id.* at 548. The resident of the home told the officers that Cote had arrived in the truck with another man. *Id.* Officers knocked on the door of the house, were allowed inside and located Cote, who had an outstanding felony warrant. *Id.* Inside the stolen truck were the components of a methamphetamine lab, which included two jars containing chemicals with Cote’s fingerprints on the jars. *Id.* The court in *Cote* pointed out that Cote was not arrested in or even near the truck, he was only seen as a passenger in the truck

and while his fingerprint was found on a jar, there was no evidence that indicated that the jar was found in the passenger area of the truck. *Id.* at 413. The court reasoned that Cote's fingerprint only proved that Cote touched the jar. *Id.*

The facts in *Callahan*, *Spruell*, and *Cote* are distinctly different than the facts in Allred's case. First, while there was no testimony regarding rent, the evidence, in the light most favorable to the State, does show that Allred was more than a temporary guest at the trailer. RP 208-09, 224. Daniels testified one could say Allred lived at the trailer on a full-time basis at the time of the incident. RP 208-09. Allred's connection to the premises, a woman living in her boyfriend's trailer, is different than a guest staying on a houseboat for three days, a man with no connection to a house beyond his presence, and being seen as a passenger in a truck. The jury was not required to find Daniels's statement that Allred would "come and go" negated his testimony that she lived there.

Second, while Daniels did testify to pleading guilty to possession of methamphetamine, this does not preclude the jury from finding Allred had dominion and control over the methamphetamine as well. Daniels did not testify that the methamphetamine found in the trailer was his and his alone. RP 207-

25. Unlike in *Callahan*, Daniels did not testify that he had brought the drugs into the premises, had not given or sold the drugs to anybody else, and had sole control over the drugs. RP 207-25. The only testimony regarding his ownership of the methamphetamine was the fact of his guilty plea. RP 221. Interpreting this testimony to mean he had sole control of the methamphetamine is not viewing the facts and making inferences in the light most favorable to the State. A person is not required to have exclusive control for the State to establish constructive possession. *Cote*, 123 Wn. App. at 549. The jury could find Allred had dominion and control of the methamphetamine along with Daniels.

From the evidence presented, a reasonable jury could find Allred had dominion and control over the premises. The jury could therefore make a permissible inference Allred also had dominion and control over the methamphetamine found near the counter across from the bed on which she had been sitting.

Allred's argument, that she was only temporarily living there and that the methamphetamine was Daniels's and not also hers, requires viewing evidence and making inferences in her favor, which is not the proper standard of review.



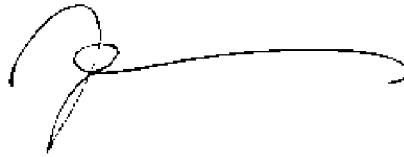
In the light most favorable to the State, the State sufficiently proved, beyond a reasonable doubt, that Allred committed the crime of Possession of Methamphetamine and this Court should affirm her conviction.

#### **IV. CONCLUSION**

The State presented sufficient evidence to sustain Allred's conviction for Possession of Methamphetamine. This Court should affirm Allred's conviction.

RESPECTFULLY submitted this 3<sup>rd</sup> day of October, 2016.

JONATHAN L. MEYER  
Lewis County Prosecuting Attorney

A handwritten signature in black ink, appearing to be 'J. Meyer', with a long horizontal stroke extending to the right.

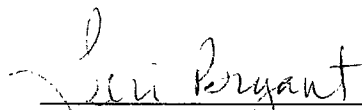
by: \_\_\_\_\_  
JESSICA L. BLYE, WSBA 43759  
Attorney for Plaintiff

**COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II**

STATE OF WASHINGTON,  Respondent,  vs.  CAITLIN ALLRED,  Appellant.	No. 48696-2-II  DECLARATION OF SERVICE
---	--

Ms. Teri Bryant, paralegal for Jessica L. Blye, Deputy Prosecuting Attorney, declares under penalty of perjury under the laws of the State of Washington that the following is true and correct: On October 3, 2016, the appellant was served with a copy of the **Respondent's Brief** by email via the COA electronic filing portal to Lise Ellner, attorney for appellant, at the following email address: [LiseEllnerlaw@comcast.net](mailto:LiseEllnerlaw@comcast.net).

DATED this 3<sup>rd</sup> day of October, 2016, at Chehalis, Washington.



Teri Bryant, Paralegal  
Lewis County Prosecuting Attorney Office

## LEWIS COUNTY PROSECUTOR

**October 03, 2016 - 2:28 PM**

### Transmittal Letter

Document Uploaded: 4-486962-Respondent's Brief.pdf

Case Name:

Court of Appeals Case Number: 48696-2

**Is this a Personal Restraint Petition?** Yes ☐ No

### The document being Filed is:

Designation of Clerk's Papers

Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_\_

Answer/Reply to Motion: \_\_\_\_\_

☒ Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

### Comments:

No Comments were entered.

Sender Name: Teresa L Bryant - Email: [teri.bryant@lewiscountywa.gov](mailto:teri.bryant@lewiscountywa.gov)

A copy of this document has been emailed to the following addresses:

[Liseellnerlaw@comcast.net](mailto:Liseellnerlaw@comcast.net)